GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 188/AIL/Lab./J/2011, dated 21st November 2011)

NOTIFICATION

Whereas, the Award in I.D. No. 5/2002, dated 1-6-2011 of the Industrial Tribunal, Puducherry in respect of the industrial dispute between the management of M/s. Hydro S&S Industries Limited, Pondicherry and its workmen represented by Pondicherry Synthetic Products Workers Union over closure and non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. Appa Rao,
Under Secretary to Government (Labour).

BEFORE THE INDUSTRIAL TRIBUNAL AT PUDUCHERRY

Present : Thiru T. Ramasamy, M.A., B.L.,
Principal District Judge.

Wednesday, the 1st day of June 2011

I.D. No. 5/2002

Pondicherry Synthetic Products
Democratic Workers Union,
No. 471, Bharathi Street,
Pondicherry .. Petitioner

Versus

The Managing Director,
M/s. Hydro S & S Industries Limited,
Sedarapet, Pondicherry. .. Respondent

This industrial dispute coming on 19–4–2011 for final hearing before me in the presence of Thiru G. Mohan Keerthi Kumar, advocate for the petitioner, and Thiruvalargal V. Krishnamoorthy and B.Vijaya Kumar, advocates for the respondent on record and the respondent having been called absent and set *ex parte* upon hearing the council for the petitioner, after perusing the case records and having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No. 114/2002/Lab./J, dated 6-8-2002 for adjudication and to settle the following disputes between the management M/s. Hydro S & S Industries Limited, Pondicherry and its workmen represented by Pondicherry Synthetic Products Democratic Workers Union:

(1) Whether the closure of the factory by the management of M/s. Hydro S&S Industries Limited, Pondicherry with effect from 26-2-2002 is justified or not? If not, to give appropriate directions.

(2) Whether the refusal to employ the workmen mentioned hereunder by the said management is justified or not? If not, to what relief they are entitled?

1. N.P. Subramanian
2. D. Murugan
3. R. Prasath
4. K.Veerappan
5. S.Vengadesan
6. D. Ezhumalai
7. K. Jeevarathinam
8. V. Vengadesan
9. G. Ravichandiran
10. P. Ezhumalai
11. S. Thangaraj
12. A. Manikandan
13. S. Perumal
14. M. Bharathiraja
15. M. Siva
16. P. Pichiyaravi
17. D. Chandrasekar
18. R. Nandagopal
19. R.S.Vengadesan
20. T. Moorthy
21. S.Muthukumaran
22. V. Manikandan
23. K. Munusamy
24. S. Ganesh

(3) Whether the management has adopted unfair labour practice ?

(4) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in that claim statement had averred as follows:

The workers employed in the respondent company formed a workers union on 24-12-2001 and joined with the petitioner's union which is a registered one. On knowing the formation of the union, the management of the respondent threatened the workers to resign from the union and since the union continued their union activities, the management issued a closure notice on 26-2-2002 in pursuance of which, the management terminated the employment of 24 workmen, all being the members of the union, and thereafter, the management again reopened the factory and started the production. Though the union approached the management to reemploy the terminated workmen with backwages and other benefits and also moved the Conciliation Officer (Labour), the management refused to appear in the conciliation and filed a statement on 4-3-2002 stating that the

union had no *locus standi* to raise any industrial dispute on behalf of the workmen since the management has not recognised the union, and that due to serious problem in the production process, sudden failure of PLC system and other technical problems, the management has closed down the factory. During the conciliation, the advice of the Labour Officer (Conciliation) to reemploy the workmen was not accepted by the management, and the conciliation ended in vain with failure report, dated 29-4-2002. The inspection by the Labour Commissioner along with the Inspector of Factories on 15-5-2002 would reveal that the factory was engaged in manufacturing process though the closure notice was affixed in the entry gate, and that nearly 10 workmen were on the production Job, that Peter Sugumar production in-charge informed that the workmen were contract workers, and it was found that all the employees were ex-company workmen, and the terminated trainee workers, namely B. Chandrasekar, R. Nandagopal, S.Perumal and S.Ganesh are found in the attendance register, and the management had also employed some contract workmen and the staff numbering 50 were on the muster roll and hence, the management has totally violated the provisions of the Industrial Disputes Act and has committed unfair labour practice in crushing the union of the workmen and terminating their service. Though the union approached the Chief Inspector of Factories, Government of Pondicherry with a complaint bringing out the above said irregularities committed by the management and to inspect the factory and to stop the production, he did not care to attend to the request of the union. On moving the Hon'ble Madras High Court in writ petition No. 31/45/2002 by the union for a direction to the Chief Inspector of Factories to consider the representations, dated 21-3-2002, 22-3-2002, 20-5-2002 and 14-6-2002. It has directed them to do so, and thereafter, the Chief Inspector of Factories, *vide* letter, dated 3-10-2002 informed the union that it had left the matter to the Industrial Tribunal for adjudication, and accordingly. Government of Pondicherry referred this dispute to this tribunal for adjudication with the above mentioned issues. Though this industrial dispute is referred for the abovesaid 24 persons, since 16 persons were reemployed by the management, it is only for the 8 persons, namely, (1) N.P. Subramanian, (2) D. Murugan, (3) R. Prasath, (4) K.Veerappan, (5) S.Vengadesan, (6) A. Manikandan, (7) M. Bharathiraja and (8) M. Siva who have not been reemployed. As per the Pondicherry Factory Rules, 1964, the closure of factories has to be informed to the Inspector of Factories and in case of any violation by the factory it has the power to cancel the licence and registration after enquiry and despite the complaint made by the union, the Inspector of Factories had not taken any step for the violation of the Act by the management, and therefore, the union prays to declare the closure of the factory with effect from 26-2-2002 as sham and nominal and as justified and to direct the management to reinstate the workmen who are non-employed with continuity of service, backwages, benefits, bonus and other attendant benefits.

3. In the counter statement filed by the respondent, it denied all the allegations contained in the claim statement of the petitioner and they are all baseless, false and frivolous, and it is contended that the petitioner union is incompetent to raise the dispute and has no lawful authority to represent the workmen of the respondent factory since the bye-laws of the petitioner union did not permit to do so, that there is no specific pleading or averment in the claim statement in respect of the above dispute against the respondent, that it was not aware of formation of the union by the workmen on 24-12-2001 and on request of the respondent, the petitioner union furnished a copy of their bye-laws to it, that the workmen never indulged in any union activities adverse to the interest of the management and there was no necessity for the management to take any action against the workmen to curb their union activities, that at the time of closure there were only 20 workmen in the rolls of the respondent factory and the petitioner has mischievously added the names of four workmen who had left the employment long prior to the closure of the factory, that after closure of the factory for the valid and *bona fide* reasons as set out in the notice of closure, dated 26-2-2002, the service of 20 workmen, as per the rolls of the factory, were terminated and payment of notice pay and compensation was made in accordance with the provisions of section 25 FFF of the Act, that since the problems relating to PLC system and formulations could not be set right immediately and the probabilities of restoration of normalcy depended upon several unpredictable factors and considering the economies, financial aspects, etc., it was decided to close down the factory on the said date, that as the plants, machinery and PLC system were imported and highly sophisticated, according to the technical expert, the complete shutting down of the plants was necessary to investigate the causes for the malfunctioning and breakdown and other follow-up action for resurrecting the manufacturing process, that one Engineering Consultants, namely, M/s. Sri Rajagopalan Engineering Industries, Mettur took up the job of repairing the plant and machinery on 21-3-2002 and continued the work till May 2002, that the progress of the said repairing work was furnished to the Inspector of Factories and Labour Department from time to time, and the petitioner

union having collected all such information furnished by the respondent to the authorities has twisted the facts and out of context as if the factory commenced on 21-3-2002 or working on 15-5-2002, that it is not aware of the said writ petition and it was neither made a party in the proceedings nor there was any notice served on the respondent, that the issues No. 2 and 3 in the reference are not maintainable and do not arise in-as-much-as the factory was closed and no industrial dispute of refusal of employment or unfair labour practice is contemplated for adjudication under such circumstances, that out of 20 workmen who were terminated from service, 14 have accepted the notice pay, compensation and other amounts due to them on closure and they have no more interest in the claim in the above dispute, and other four workmen, namely, M. Barathiraja, S. Perumal, S. Ganesh and M. Siva were not in the employment of the respondent on the date of closure and the claims on their behalf are not sustainable, and the workman namely, N.P. Subramanian has accepted the accounts and settled his account on closure, and the remaining 5 workmen refused to accept the settlement of accounts and returned the cheques long after the closure and merely because they had returned cheques their termination of service on account of closure will not become illegal nor it has given rise to a dispute of refusal of employment, that in the course of the investigation and technical analysis of the problems, the consultants observed that one of the important causes for failure is the human problem attributed to the workmen employed in the factory, and recommended to run the factory with the efficient and well-trained workmen without complaint regarding quality of products, that the union and a few workmen pursuing a policy of confrontation taking a recalcitrant attitude resorted to various illegal activities, like dharna at the factory gate, demonstrations, picketing, etc., obstructing and interfering with the resurrection work demanding stoppage of such work, and based on the several false complaints as claimed in the statement, the concerned authorities were visiting the factory regularly while the resurrection work was being attended by the consultants and they have been satisfied with its work, that it was the intention of the respondent to victimize the workmen for forming the union as alleged by the petitioner, it would not have taken up the resurrection work after closure, that soon after one of the two plants was satisfactorily made ready by the consultants the respondent started to perform the critical applications by recruiting the qualified diploma holders, that since the erstwhile 12 workmen whose services were terminated due to closure underwent the training for about two months under the qualified instructors, on their approach, they were observed on the basis of the fresh appointment, that the factory which was reopened in such a manner after the closure does not in any way make the closure of the factory illegal or *mala fide* and there was no legal obligation on the respondent to offer reemployment to any of the erstwhile workmen affected by closure, that because the respondent is manufacturing reinforced polypropylene products and the plants are set up to produce about 300 different grades of complicated formulations and maintenance of quality confirming to the customers, the technical expert has recommended certain functions in the industry should be performed only by the diploma holders, and other jobs should be performed only by qualified workmen, and therefore, there is no scope for employing the other workmen without undergoing technical training, and that the said workmen were indulging in various subversive activities obstructing and interfering with the resurrection work and demanding stoppage of such work in the factory after closure which unduly delayed the resurrection work and the respondent will be put to great hardship in the event of reinstatement or such workmen. Hence, the respondent prays to dismiss the claim made in the dispute.

4. The representative of the petitioner union was examined as PW.1 through whom Exs.A1 to A12 were marked. On the side of the respondent management, no oral or documentary evidence has been adduced.

5. *The points for consideration are:*

(1) Whether the closure of the factory by the management of M/s. Hydro S&S Industries Limited, Pondicherry with effect from 26-2-2002 is justified or not? It not, to give appropriate directions.

(2) Whether the refusal to employ the 24 workmen by the said management is justified or not? It not, to what relief, they are entitled?

(3) Whether the management has adopted unfair labour practice?

(4) To compute the relief, if any, awarded in terms or money, if it can be so computed.

6. *The additional points (issues) as framed for consideration are:*

(1) Is not the order of referrence bad in law?

(2) Are the workmen employed in the respondent industry eligible to become members of the petitioner union and the alleged membership is valid?

(3) Is the petitioner union lawfully authorised to raise the above industrial dispute?

(4) Has the petitioner union representative capacity to raise the above dispute on behalf of the workers employed in the respondent industry?

7. *Points No.1 to 3:* Before going to discuss on the merits of the case we have to say about the proceedings in this industrial dispute before hearing the arguments of the petitioner union. While the matter was pending inquiry, the respondent management filed IA. No. 32/2003 to frame certain issues in this case as additional issues, and after inquiry the petition was allowed on 23-3-2005 and four issues were framed as additional issues in this case, as stated above. Subsequently, on 4-4-2006 the evidence of PW.1 Veerappan in chief was recorded and Exs.Al to A12 were marked on behalf of the petitioner union. Thereafter, the respondent management filed another application in I.A. No.22/2006 to take and try the abovesaid 4th issue as a preliminary issue and both parties conceded to try that issue as a preliminary issue. The abovesaid 4th issue: "Has the petitioner union representative capacity to raise the above dispute on behalf of the workers employed in the respondent industry?" was taken up as a preliminary issue in the enquiry. As such, as per order, dated 21-8-2009, this Tribunal rejected the request of the respondent to try the 4th issue as a preliminary one and it was ordered to record evidence in this case and dispose of the industrial dispute on the basis of evidence.

8. Even after that order, despite sufficient opportunity given till 19-10-2010 the respondent neither came forward to cross-examine PW.1 nor evidence was adduced on its side. But, on 19-10-2010 the respondent filed a memo. stating that it has preferred a writ as against that order, dated 21-8-2009 under writ case S.R. No. 98664 along with stay petition under S.R. No. 98666 and subsequently on 11-11-2010 it has filed another memo. saying that since both writ petition and stay petition are pending, it could not proceed further with the case. Thereafter the respondent management has not been represented before this Tribunal at each and every hearing, and then, service of notice was caused on the respondent management to appear on 10-3-2011 before this Tribunal and even after service of notice caused to the learned counsel for the respondent management for representing the case on 10-3-2011 they did not turn up to proceed with the case, and at this stage, the learned counsel for the petitioner union represented that this case is of the year 2002 and though PW.1 was examined on 4-4-2006 till now he was not cross-examined by the respondent, and despite sufficient opportunity given the respondent did not represent the case and further, so far, no stay order as against the abovesaid rejection order as represented by the respondent has been produced, and even no order of stay has been received by this Tribunal from the Hon'ble Madras High Court, and so, it is not interested in proceeding with this case, and hence, on 18-3-2011 this Tribunal has ordered that the respondent called absent and set *ex parte,* and then, argument of the petitioner was heard on 24-3-2011, and even till the date of delivery of judgment, the respondent management has not taken keen interest to represent in this case.

9. Now coming to the above points, one of the members of the petitioner union, namely, Veerappan was examined as PW.1 and he has given evidence according to the claim statement filed on behalf of the petitioner union. Through him, photocopies of 12 documents have been exhibited as Exs.A1 to A12. Ex.A1 is the letter, dated 26-2-2002 given by the petitioner union to the respondent management seeking demands mentioned therein. Ex. A2 is the letter, dated 26-l2-2001 sent by the respondent to the Union Secretary seeking copy of union registration certificate and bye-laws. On 26-2-2002 the respondent management has issued notice of closure to close down the factory for the reasons: (1) Sudden failure of the PLC system, which is the nerve center of all the production activities, (2) failure of instrument air-compressor while the standby is under major maintenance for more than a week, and (3) the management has been facing technical problems relating to formulation of our products seriously affecting the marketability and the said notice is exhibited as Ex.A3 wherein it is informed to the workmen eligible for making payment for notice pay *in lieu of* one month notice and compensation on account of closure in accordance with the provisions of section 25 FFF of the Industrial Disputes Act, 1947. Ex. A4 is the letter, dated 4-4-2002 sent by the respondent to the Labour Officer (Conciliation), Labour Department, Pondicherry enclosing the copies of court judgments to support the right to the management to close the factory either temporarily or permanently. To the dispute raised by the petitioner union before the Labour Department (Conciliation), the respondent had filed counter statement before the Labour Officer (Conciliation), Pondicherry, and the said counter statement along with the covering letter, dated 20-4-2002 has been marked as Ex. A5. Ex.A6 is the failure report, dated 8-7-2002 submitted by Labour Commissioner for the Government in respect of the above dispute. Ex. A7 is the letter, dated 14-6-2002 sent by the petitioner union addressed to the Labour Commissioner requesting for cancellation of factory licence. Ex.A8 is the order, dated 1-8-2002 passed by the Hon' ble High Court of Judicature at Madras in Writ Petition No. 31 /45 of 2002 directing the Chief Inspector of Factories, Labour Department, Pondicherry to consider the representations of the petitioner union. Ex.A9 is the letter, dated 3-10-2002 sent by the Office of the Chief Inspector of Factories and Boilers, Labour Department, Pondicherry intimating the petitioner union for referring the industrial dispute to the Tribunal for adjudication. Ex.A10 is the letter, dated 20-5-2002 sent by the All India Central Council

of Trade Unions, Pondicherry to the Commissioner / Chief Inspector of Factories and Boilers, Labour Department, Pondicherry to take action for reinstatement of workmen of the petitioner union. The respondent management has given reply, dated 24-6-2002 to the Labour Officer (Conciliation), Pondicherry for the complaint lodged by the petitioner union in respect of the above industrial dispute, and the said reply has been exhibited as Ex.A 11. After issue of closure notice it is said that the respondent factory was running and at that time, one of the contract labourers, namely, Vinayagam sustained injury by electric shock in the respondent factory and in this connection, he lodged a complaint against one Perumal, contractor of the respondent management, and the first information report registered under Crime No.30/2002 in Katterikuppam Police Station has been exhibited as Ex.A12.

10. Learned counsel for the petitioner argued that though the petitioner was examined on 4-4-2006, the management did not cross-examine the petitioner and though the matter was posted for the evidence of the respondent to 5-10-2009 and despite sufficient opportunity given, the respondent did not let in evidence. He further argued that the workers employed by the respondent formed a workers union on 24-12-2001 and joined with the petitioner's union, and on knowing the formation of the union, the management threatened the workers to resign from the union and also issued a memo. directing them to resign from the union, and since the workers continued in their union activities, the management issued a closure notice, on 26-2-2002 and as such, terminated the employment of 24 workmen, all being the members of the union, and after terminating them, the management again reopened the factory and has started the production, and on approach by the union with the management and even in the conciliation of Labour Officer, the management refused to reemploy them, that the claim of the management before the conciliation that due to serious technical problem as stated in the closure notice the service of the workmen was terminated is not genuine and so, the conciliation was ended in vain and a failure report was prepared on 29-4-2002 that on inspection by the Inspector of Factories on 15-5-2002 it was noticed by the workmen that the management run the factory and effected production by engaging contract labourers reemploying some of the ex-company workmen and the four terminated trainee workers in all 50, and as such, the management has committed unfair labour practice and illegally terminated their services for the union activities, and that the documents placed by the petitioner are enough to come to the conclusion that the closure of the factory by the management from 26-2-2002 and the refusal for reemployment of the eight workmen are not justified and thereby, it has adopted unfair labour practice and hence, the petitioner union claims the relief as claimed by them.

11. Though the perusal of Government notification, dated 6-8-2002 would reveal that the respondent management refused to give employment to 24 workmen of the petitioner union, the claim statement filed by the petitioner avers that out of the 24 workmen referred, 16 workmen were reinstated/reemployed by the respondent management, the remaining eight workmen, namely, N.P. Subramanian, D. Murugan, R. Prasath. K.Veerappan, S.Vengadesan, A. Manikandan, M. Bharathiraja and M. Siva have not been reemployed, in this circumstance, we have to consider the dispute only in respect of the said eight workmen.

12. The perusal of the evidence of PW.1 and the documents marked through him as Exs.A1 to A12 would clearly disclose that while the said 24 workmen of the petitioner union worked in the respondent management earlier to the closure of the factory and on 26-2-2002 after issue of closure notice by the respondent management their services were terminated by the management for the reasons as stated above, though during the conciliation at Labour Office the management by filing counter Ex.A5 on 20-4-2002 refused to reinstate the workmen and the same is also noticed from the failure report Ex.A6, the last paragraph of the same failure report Ex.A6 would specifically disclose that at the time of inspection made on 15-5-2002 by the Inspector of Factories in the respondent factory, the respondent factory was observed engaged in manufacturing process without lifting the said closure notice, and the factory engaged in the production of components by employing nearly 10 workmen in the uniform and all the employees were ex-company workmen and the terminated trainee workers namely, D. Chandrasekar, R. Nandagopal, S. Perumal and S. Ganesh were found in the attendance register, and apart that, the names of 16 other workmen, were also on roll in the attendance register and the factory was functioning on three shifts and shift schedule register was also maintained. That report would further reveal that the respondent management did not represent before the conciliation authority and did not come forward to amicable settlement between them and the petitioner union and they had filed only reply Ex.A5 before the conciliation authority. As such, Ex.A6 failure report has clearly established that without lifting the said closure notice, the factory of the respondent was functioning with reemploying some of the ex-workmen.

13. The respondent has contended in the counter statement in paragraph 8 that "the respondent was not aware of formation of any union by the workman

on 24-l2-2001 nor the workmen informed them that they had formed a union". But perusal of the letter, dated 26-12-2001 Ex.A2 addressed by the respondent company to K.Veerappan, Union Secretary, it is understood that after getting intimation from the petitioner union that the workers of the respondent company joined in the petitioner union, by letter, dated 24-12-2001, the respondent required the union to furnish the copy of union registration certificate and bye-laws for their reference and records. As such, while Ex.A2 letter has been addressed by the respondent to the Union Secretary requesting to produce the bye-laws of the union, the respondent cannot take such a contention as stated above, further, in the same paragraph of the counter, it is admitted by the respondent that on request (it is presumed according to Ex.A2 letter) the petitioner union furnished to the respondent a copy or their bye-laws. Subsequent to this, as admitted by the respondent in the counter Ex.A5 in paragraph 5 filed before the conciliation, it is noticed that the respondent organised a workers meeting on 28-1-2002 to be addressed by the technical people regarding production and by Human Resource Development, Industrial Relations and other skill development programmes through M/s. Time Foundation, Chennai and though notice of the meeting was given to the workmen on 24-1-2001, the said occasion was never utilised. It is also stated therein that it is unimaginable that the workmen or the union did not whisper a word objecting to such alleged activities by the management, but such admission made in Ex.A5 counter has not totally been raised by the respondent in the counter statement filed before this Tribunal for the reasons best known to them. After the above two developments *i.e.,* formation of union on 24-12-2001 and not attending the meeting on 28-1-2002 by the workmen on 26-2-2002 the said notice of closure was issued by the respondent to the workmen for the three reasons as earlier stated.

14. As already pointed out, though notice of closure of the factory is in effective and the Conciliation Officer has pointed out in the failure report that without raising the notice of closure, the factory was functioning on 15-5-2002 with a number of workmen in uniform and maintaining three shifts, though denied by the respondent in its counter, while the respondent has contended in its counter that after closure of the factory, they engaged a firm of Engineering Consultants namely, M/s. Sri Rajagopalan Engineering Industries, Mettur for the purpose of ascertaining and investigating the causes of the malfunctioning of the plants and machinery and the consultants took up the job and started their work on 21-3-2002, they did not produce any piece of correspondence made between them in those aspects and neither the respondent management nor the said consultant has come into the box to establish the above contention, further, they have not produced either before this Tribunal or at least before the conciliation at Labour Department any report said to have submitted by the said Engineering Consultant for finding out the said three causes for malfunctioning of the factory at the hands of ex-workmen. Though the respondent has contended in its counter in paragraph 13 that the progress of the work carried out by the Engineering Consultants and other material information were furnished by them to the Inspector ot Factories and other officials of the Labour Department from time to time, the copies of communications were not produced to establish and for ascertaining the fact on which date the same reached the said officials since the same did not find place in the failure report Ex.A6.

15. The next point raised by the petitioner union in connection with the working of the respondent factory immediately after the closure notice is that one Vinayagam had worked in the respondent company from 15-4-2002 under the labour of contractor one Perumal and on 18-4-2002 at about 6.00 p.m. while he was involved in the work of stitching the plastic bags by filling the products he was attacked with electric shock in his right hand and thereby he sustained injury on his right hand and after he was left out of the company on 20-4-2002, in that regard a complaint was lodged by him before the Katterikuppam Police Station and the same was registered under Crime No. 30/2002. The photocopy of FIR registered for the said crime has been exhibited as Ex.A12. Copy of FIR Ex.A12 would clearly prove that the respondent factory was functioning prior to the date of 15-4-2002 and the said document would also strengthen the inspection of the respondent factory by the Inspector of Factories, Labour Department, as earlier discussed. In such a circumstance, the contention of the respondent that the factory did not function on the date of inspection *i.e.,* on 15-5-2002 goes to fail and EX.A12 FlR confirms that the respondent factory was functioning earlier to 15-4-2002. In the above facts and circumstances, this Tribunal has come to the conclusion that the closure of the factory by the respondent management is illegal and not justified, merely because the respondent management closed the factory on 26-2-2002 on account of the union activities as claimed by the petitioner union.

16. Though the respondent filed counter statement and copies of documents in this industrial dispute as already stated, they were not examined themselves and the documents produced have not been marked in this

case. The documents produced by them contain apprenticeship completion orders pertaining to four workers, settlement of accounts relating to other four workmen, and other settlement of accounts along with withdrawal letters given by the 13 other workmen. The perusal of those records would reveal that the 16 left over claimants as per the claim statement of the petitioner union, except one V. Vengadesan had withdrawn the industrial dispute raised in this case since they were settled by the respondent management. But the said V. Vengadesan has not been given any reason by either of the parties for omitting him from the claim though his name has been added initially in the industrial dispute by the petitioner union. Anyhow, so far as the remaining eight persons, as claimed by the petitioner union, are concerned, the respondent management has not come forward to give evidence, as explained above, to disprove the claim of the petitioner union. The documents produced by the petitioner union, as earlier discussed, have well established and strengthen the claim of the petitioner union in this case. The other contentions made in the counter by the respondent are not connected to the industrial dispute raised in this case.

17. According to the failure report Ex.A6, it is pertinent to be noted here that at the time of inspection by the Authorities of the Labour Department on 15-5-2002 it was pointed out that the respondent management reemployed four workmen namely, D.Chandrasekar, R.Nandagopal, S.Perumal and S.Ganesh which had been noted in the attendance register maintained in the respondent factory as on 15-5-2002. While it is also admitted by the respondent in its counter in paragraph 20 that some of the erstwhile workmen whose services were terminated due to closure approached the management for fresh employment and the respondent offered them employment on the condition that they should undergo necessary training under the qualified instructors for the duration specified by them and their request would be entertained subject to passing the technical aptitude test, and accordingly 12 workmen underwent the training for about two months under the qualified instructors and they were absorbed on the basis of the fresh appointment orders, the respondent has not submitted the qualification required for the reemployment of the workmen after closure of the factory and the document or order for appointment of the workmen with necessary training. The respondent having stated about the training with technical aptitude imparted to the reemployed workmen as stated in the counter has not produced such appointment orders for the reemployment of those workmen has not been produced to establish such contention. As already stated, nothing has been produced by the respondent to establish the fact with documentary proof that the factory was closed on 26-2-2002 for the said three reasons, that Engineering Consultants were appointed to ascertain and investigate the malfunctioning of the factory and that the after issue of closure notice, the workmen were reemployed with the passing of technical aptitude test.

18. Though the respondent has contented that in the course of their investigation and technical analysis of the problems faced by the industry the consultants observed that one of the important causes for failure is the human problem attributed to the workmen employed in the factory, there is no mentioning in it about the specific or particular analysis of the problems caused by the workmen in a particular work and no support of such document produced by the technical expert has been produced to establish the said contention. In the absence of specific technical report by expert regarding the analysis of the problems the abovesaid contention cannot be believed and accepted to be a true one. As already stated, the respondent has not entered into the box with documentary proof to disprove the claim of the petitioner union. In the above circumstance, and as already discussed that the closure of the factory with effect from 26-2-2002 is not justified, it has to be considered that the refusal to employ the said eight workmen as claimed by the petitioner union by the said respondent management is not justified and the management has adopted unfair labour practice, and they have to be given employment with effect from 26-2-2002 with all benefits till date.

19. *Additional points No. 1 to 4 :*

Though the respondent has raised these additional points in its counter in respect of the capacity of the petitioner union and raising of the dispute by the petitioner union, apart from the counter statement, as already stated, the respondent did not come to the box to establish its contention and further, no documentary proof has been produced by the respondent to prove its claim made in the counter. The documents produced and marked on the side of the petitioner union are well established to disprove the contentions of the respondent in these additional points. Hence, these points are answered accordingly.

20. *Point No. 4 :*

In the result, the industrial disputes is allowed. The respondent management factory of M/s. Hydro S & S Industries Limited, Pondicherry is directed to reinstate the said eight workers of the petitioner union, namely, (1) N.P. Subramanian, (2) D. Murugan, (3) R. Prasath. (4) K.Veerappan, (5) S. Vengadesan, (6) A. Manikandan, (7) M. Bharathiraja and (8) M. Siva in service with

continuity of service, full back wages, bonus and other attendant benefits from 26-2-2002 till date of reemployment within one month from the date of this award.

Typed to my dictation, corrected and pronounced by me in the open court on this the 1st day of June 2011.

T. RAMASAMY,
Principal District Judge,
Industrial Tribunal
Puducherry.

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List of witness examined for the petitioner :

PW.1 — 4-4-2006 Veerappan, Secretary of petitioner union.

List of witness examined for the respondent : Nil

List of exhibits marked for the petitioner:

Ex.A1 — 4-4-2006 Photocopy of letter, dated 26-2 -2002 addressed by the petitioner union to the Conciliation Officer raising dispute.

Ex.A2 — 4-4-2006 Photocopy of letter, dated 26-12-2001 by the respondent to the Labour Union Secretary calling for the union registration certificate.

Ex.A3 — 4-4-2006 Photocopy of notice of closure, dated 26-2-2002 issued by respondent company.

Ex.A4 — 4-4-2006 Photocopy of letter, dated 4-4-2002 addressed by the the respondent to the Labour Officer (Conciliation) enclosing the citations.

Ex.A5 — 4-4-2006 Photocopy of counter statement filed by the respondent before the Labour Officer (Conciliation) with covering letter.

Ex.A6 — 4-4-2006 Photocopy of report on failure of conciliation, dated 6-4-20006 sent by Labour Officer (Conciliation), Government of Puducherry to the Secretary to Government (Labour), Pondicherry.

Ex.A7 — 4-4-2006 Photocopy of letter, dated 14-6-2002 sent by the petitioner union to the Labour Commissioner/Chief Inspector of Factories complaining about functioning of the factory.

Ex.A8 — 4-4-2006 Photocopy of order, dated 1-8-2002 of the Hon'ble High Court passed in W.P. No. 31745/2002.

Ex.A9 — 4-4-2006 Photocopy of letter, dated 3-10-2002 sent by the Chief Inspector of Factories and Boilers to the petitioner union regarding not initiating action against the respondent.

Ex.A10 — 4-4-2006 Photocopy of letter, dated 20-5-2002 sent by the petitioner union to the Chief Inspector of Factories and Boilers, Labour Department, Pondicherry.

Ex.A11 — 4-4-2006 Photocopy of reply letter, dated 24-6-2002 sent by the respondent management to the Labour Commissioner, Pondicherry to the complaint lodged by petitioner union.

Ex.A12 — 4-4-2006 Photocopy of F.I.R. No. 30/2002, dated 20-4-2002 registered by Katterikuppam Police Station.

List of exhibits marked for the respondent: Nil

T. RAMASAMY,
Pricipal District Judge,
Industrial Tribunal,
Puducherry.

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*GO. Rt. No. 189/AIL/Lab./J/2011, dated 21st November 2011*)

NOTIFICATION

Whereas, the Award in I.D. No. 8/2010, dated 17-8-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Leo Fasteners Unit-II, Puducherry and Thiru M. Mohan over non-employment and unfair labour practice has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A. M.L.,
II Additional District Judge
Presiding Officer, Labour Court,
Pondicherry.

Wednesday, the 17th day of August 2011

I. D. No. 8/2010

M. Mohan,
1, Vinayagar Koil Street,
Ramalingam Nagar,
Muthialpet, Pondicherry. .. Petitioner

Versus

The Managing Director,
Leo Fasteners Unit-II,
Thattanchavady,
Pondicherry. .. Respondent

This petition coming before me for final hearing on 5-8-2011 in the presence of Thiruvalargal S. Lenin Durai, M. Veerappan, William Jerome Vincent and M. Danalatchoumy, advocates for the petitioner, Tmt. Vrintha Mohan, advocate for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 40/AIL/Lab./J/2010, dated 4-3-2010 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.,*

1. Whether the dispute raised by Thiru M. Mohan against the management of M/s. Leo Fasteners Unit-II, Puducherry over non-employment is justified or not?

2. If justified, what relief the petitioner is entitled to?

3. To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has stated as follows:—

The petitioner joined as Helper in the respondent company on 6-12-2004 and he was confirmed with effect from 7-12-2006. He performed his duty in the production continuously for four years and during his service period, he proved his skill and talent and co-operated with the management in all aspects to increase the production and also maintained discipline within the factory premises. In order to protect his service condition and rights, he joined an Employees Union affiliated with BMS and placed to charter of demand to the management along with the other employees. The management get provoked for the act of the petitioner to join in an Employees Trade Union and thereby the management adopted all kinds of unfair labour practice against the petitioner. The management on 5-10-2009 threatened the petitioner with false allegations that he danced during ayuthapooja festival celebration and therefore a show cause letter was issued by the Managing Director stating that the petitioner danced along with other employees at the time of ayudhapooja festival celebration. He denied the said allegation in his letter dated 7-10-2010. But without giving reasonable opportunity and without any formal enquiry, the management all of a sudden terminated the service of the petitioner along with other six workmen on 20-10-2009. No domestic enquiry has been conducted in this case. Hence, the termination of the petitioner is illegal.

3. In the counter statement, the respondent has stated as follows:—

This respondent denied the averments of the petitioner that he maintained discipline within the factory premises. The petitioner along with several other employees were whistling and dancing in a vulgar manner on 27-9-2009 after completion of Pooja and while breakfast was being served to all the employees, which was noticed by the Managing Partner and other senior staff of the company. It is not possible to describe the vulgarity, but the manner in which the petitioner's hips and body were moving were extremely suggestive. With the fact that many of the company lady employees as well as C.L. ladies were standing around, is what made their behaviour vulgar. The petitioners were also found dancing in such a manner on 26-9-2009 which was the day when the factory was being cleaned prior to the pooja. And that the partner of the company A.L. Shah had also seen this and had stopped the petitioners but their behaviour despite this warning is not understandable. The reply of the petitioner dated 7-10-2009 is bald, absurd and there is no specific denial or counter for the show cause notice issued by the management on 5-10-2009. Hence, the termination order issued by the management dated 20-10-2009 is just equitable and is warranted on the situation and circumstances failing which great threat, harm gross and discipline and hardships would have been created to the law abiding and harmonious employees especially the lady employees of the company and as such the petitioner is guilty of gross indiscipline, indecent behaviour and willful insubordination. The petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the show cause notice

issued by the management but the explanation tendered by him was unjust, unreasonable and non-convincing. Hence, he prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PW1 was examined and Ex.P1 to Ex.P8 were marked. On the side of the respondent, RW1 was examined and Ex.R1 to Ex.R4 were marked.

5. *Now the point for determination is:*

"Whether the petitioner is entitled for the relief sought for?"

6. *On this point:*

The contention of the petitioner is that he was working as Helper in the respondent company from 6-12-2004 and he was confirmed as permanent employee with effect from 7-12-2006. It is further contended by the petitioner that he joined in Employee's Union affiliated with BMS and hence the respondent management with a false allegation that he whistled and danced in a vulgar manner on 27-9-2009 after completion of pooja and terminated him from service without conducting any domestic enquiry.

7. On the side of the petitioner, the petitioner examined himself as PW1. PW1 in his evidence has deposed as narrated in the claim statement. He marked Ex.P1 copy of the confirmation letter, Ex.P2 copy of the service standing order, Ex.P3 copy of the show cause notice issued to the petitioner, Ex.P4 copy of the explanation given by the petitioner to the respondent management, Ex.P5 copy of the termination order, dated 20-10-2009, Ex.P6 copy of the reply submitted by the petitioner to the respondent, dated 25-1-2010, Ex.P7 copy of the petition filed before the Conciliation Officer and Ex.P8 copy of the failure report, dated 4-2-2010.

8. *Per contra,* the contention of the respondent is that the petitioner along with several other employees were whistling and dancing in a vulgar manner on 27-9-2009 after completion of pooja and while breakfast was being served to all the employees, which was noticed by the Managing Partner and other senior staff of the company and hence he was issued with the show cause notice and since the explanation submitted by the petitioner was not satisfied, he was terminated from service. In order to prove the said version, the HR. Executive was examined as RW1, who deposed as narrated in the counter statement.

9. There is no dispute that the petitioner was an employee in the respondent company from 6-12-2004 and he was confirmed with effect from 7-12-2006. Further Ex.P1 would confirm the said fact. According to the petitioner, since he was participated in the union activities, he was terminated from service. But the said version of petitioner is denied by the respondent and has stated that the petitioner and some other employees were whistled and danced in a vulgar manner in pooja celebration and hence he was terminated from service after giving due opportunity to him. In order to prove the petitioner has whistled and danced in a vulgar manner in pooja celebration, no witness has been examined. According to RW1, the said incident was witnessed by the Managing Partner and some of the senior staff. But neither the said Managing Partner nor any one of the senior staff was examined as a witness to prove the said fact. When the reason for terminating the petitioner has been denied by the petitioner, it is for the respondent to prove the same through oral or documentary evidence. But on the side of the respondent, no witness was examined except RW1.

10. The learned counsel for the petitioner would argue that the petitioner was terminated from service without conducting any domestic enquiry and hence the issue of termination order to him by the respondent company is a clear case of violation of rule of law, against the principles of natural justice and an act of unfair labour practice and therefore, the said order is illegal and is liable to be set aside.

11. It was also submitted by the learned counsel for the petitioner that there are various case laws, judgments, which indicate clearly that any employee removed from service without taking basic principles, the order of such removal/termination is to be treated as *null and void* and it is not maintainable as per the law and he further relied upon the following decision in order to support his claim:—

2011(1) C.L.T.266, Supreme Court of India, Hon'ble Judges D.K. Hain and H.L. Dattu, JJ, Civil Appeal No.10135 of 2010 (Arising out of SLP © Nos. 7187-7194 of 2008) between Amar Chakaravarthy and Others *Vs.* Maruti Suzuki India Limited.

12. On the other hand, the learned counsel for the respondent submitted that the petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the show cause notice issued by the management but the explanation tendered by him was unjust, unreasonable and non-convincing and hence he was terminated from service.

13. On perusal of records, it is seen that the petitioner was issued with a show cause notice dated 5-10-2009 by the Managing Director and called for an explanation as could be seen from Ex.P3 show cause notice. The records would further reveal that the petitioner has given his explanation on 7-10-2009 denying the contents found in Ex.P3 as could be seen from Ex.P4 and then the petitioner was terminated from service by the

respondent company on 20-10-2009 which would evident from Ex.P5. Hence, the said records would clearly prove that no charges have been framed against the petitioner and based on which, the domestic enquiry has not been conducted by the respondent before terminating him from service. It is pertinent to refer the following decisions, which is relevant to this case:-

2002(4) L.L.N. 850:

"Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave- Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable."

1996(1) L.L.N. 526:

"In this case, the finding recorded by the High Court and the Labour Court is that stones were thrown and the officers were attacked which resulted in grievous injuries to the officers. But it is seen that the appellants alone were not members of the assembly of the workmen standing at BPL bus stop. The Labour Court had discretion under S.11A of the Industrial Disputes Act to consider the quantum of misconduct and the punishment. In view of the surging circumstances *viz.,* the workmen were agitating by their collective bargain for acceptance of their demands and when the strike was on the settlement during conciliation proceedings though initially agreed to, was resiled later on. They appear to have attacked the officers when they were going to the factory. Under these circumstances, the Labour Court was well justified in taking a lenient view and in setting aside the order of dismissal and giving direction to reinstate the workmen with a cut of 75 per cent of the back wages up to the date of award. In our considered view the discretion exercised by the Labour Court is proper and justified in the above facts and circumstances. The High Court had not adverted to these aspects of the matter. If merely had gone into the question whether the act complained of is a misconduct."

1991 (1) LLN Page 817:

"Misconduct - Situs of - Relevancy of - Workmen dismissed without enquiry for misconduct of assaulting engineer of factory - Incident taking place outside factory premises - Such an incident, held, cannot form basis of charge on ground of misconduct to bring it within scope of relevant standing order - Award of Labour Court reinstating workmen on ground that the involvement of workmen in the incident of assault has not been established cannot be interfered with by High Court - High Court cannot go into question of adequacy of evidence."

14. Even in a case of assaulting the employee, the domestic enquiry should be conducted as held by the Hon'ble High Court in the third citation mentioned above. In this case, the respondent's main allegation against the petitioner is that he whistled and danced in the pooja celebration in a vulgar manner that too was not proved by examining any of the witnesses before this court. RW1 marked the copy of the Board Resolution as Ex.R4, which is not in any way helpful to the case of the respondent. Further it is not the case of the respondent that the petitioner was regular in misconduct with the employees. There is no past history of the workman to show that the petitioner involved in any misconduct or indiscipline by violating the principles of labour enactments. In this case, no enquiry conducted by the respondent to prove the alleged charges as stated by RW1 in the presence of lady employees, which act of indiscipline violated the code of conduct within the campus of the industry. The petitioner cannot be denied to purports his defence before the Enquiry Officer. No Enquiry Officer was appointed to conduct the domestic enquiry to verify the charges leveled against the petitioner. In the above circumstances, the termination of the petitioner without conducting the domestic enquiry is against the labour legislation.

15. Further as per Ex.P1, the petitioner was an employee in the respondent company for more than four years without any interruption and his services have also been confirmed. Hence, it was necessary to have given opportunity to the petitioner before coming to the conclusion that he was not found suitable or fit for being continued in service. Neither no such opportunity was given to the petitioner, nor principles of natural justice have been complied with. Hence, I feel that the termination of the petitioner from the service is illegal and the same is liable to be set aside and I feel that 50% of wages can be awarded in the circumstances of the case towards back wages. The petitioner is also entitled for other attendant benefits. Accordingly, this point is answered.

16. The learned counsel for the respondent would argue that after termination, the petitioner was settled all the dues and hence he cannot claim any relief from the respondent. In order to prove the RW.1 has marked accountability clearance as Ex.R1, letter to ICICI by the respondent as Ex.R2, letter by ICICI to the respondent as Ex.R3. A perusal of these records would show that the petitioner has received a sum of ₹ 27,225 towards full and final settlement including two months salary due to the petitioner. Hence, the respondent can adjust the amount, after deducting the amount already paid, while giving back wages and other benefits to the petitioner. Accordingly, this point is answered.

17. In the result, the industrial dispute is allowed. The respondent is hereby directed to reinstate the petitioner with 50% of back wages and other attendant benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 17th day of August 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner :

P.W.1 — 23-6-2011 M. Mohan

List of witnesses examined for the respondent :

RW1 — 25-7-2011 Sachin J. Khiya

List of exhibits marked for the petitioner :

Ex.P1 — Confirmation letter issued by the respondent to the petitioner, dated 15-7-2008.

Ex.P2 — Copy of Service Standing Order

Ex.P3 — Show cause notice issued by the Managing Director, dated 5-10-2009.

Ex.P4 — Petitioner's explanation letter, dated 7-10-2009.

Ex.P5 — Termination Order issued by the Managing Director, dated 20-10-2009.

Ex.P6 — Letter sent by the petitioner to the respondent, dated 25-1-2010.

Ex.P7 — Petition filed by the petitioner before Conciliation Officer, dated 17-11-2009.

Ex.P8 — Failure report, dated 4-2-2010

List of exhibits marked for the respondent :

Ex.R1 — Accountability Certificate

Ex.R2 — Letter to ICICI Bank by the respondent, dated 3-11-2010

Ex.R3 — Letter by respondent to the ICICI, dated 11-3-2010

Ex.R4 — Copy of Board Resolution

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 190/AIL/Lab./J/2011, dated 21st November 2011*)

NOTIFICATION

Whereas, the Award in I.D. No. 9/2010, dated 17-8-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Leo Fasteners Unit-II, Puducherry and Thiru K. Murugavel over non-employment and unfair labour practice has been received ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Wednesday, the 17th day of August 2011

I.D. No. 9/2010

K. Murugavel,
198, Kuyavar Street,
Peryababu Samuthiram,
Villupuram District. .. Petitioner

Versus

The Managing Director,
Leo Fasteners Unit-II,
Thattanchavady,
Pondicherry. .. Respondent

This petition coming before me for final hearing on 5-8-2011 in the presence of Thiruvalargal S. Lenin Durai, M. Veerappan, William Jerome Vincent and M. Danalatchoumy, advocates for the petitioner, Tmt. Vrintha Mohan, advocate for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 41/AIL/Lab./J/2010, dated 4-3-2010 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.,*

(1) Whether the dispute raised by Thiru K. Murugavel against the management of M/s. Leo Fasteners Unit-II, Puducherry over non-employment is justified or not?

(2) If justified, what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has stated as follows:

The petitioner joined the service of the respondent company on 19-9-2007 and appointed as a Helper in the said company. He performed his duty in the production continuously for two years and during his service period, he proved his skill and talent and co-operated with the management in all aspects to increase the production and also maintained discipline within the factory premises. In order to protect his service condition and rights, he joined an Employees Union affiliated with BMS and placed to charter of demand to the management along with the other employees. The management get provoked for the act of the petitioner to join in an Employees Trade Union and thereby the management adopted all kinds of unfair labour practice against the petitioner. The management on 5-10-2009 threatened the petitioner with false allegations that he danced during ayuthapooja festival celebration and therefore a show cause letter was issued by the Managing Director stating that the petitioner danced along with other employees at the time of ayuthapooja festival celebration. He denied the said allegation in his letter, dated 7-10-2010. But without giving reasonable opportunity and without any formal enquiry, the management all of a sudden terminated the service of the petitioner along with other six workmen on 20-10-2009. No domestic enquiry has been conducted in this case. Hence, the termination of the petitioner is illegal.

3. In the counter statement, the respondent has stated as follows:

This respondent denied the averments of the petitioner that he maintained discipline within the factory premises. The petitioner along with several other employees were whistling and dancing in a vulgar manner on 27-9-2009, after completion of pooja and while breakfast was being served to all the employees, which was noticed by the Managing Partner and other senior staff of the company. It is not possible to describe the vulgarity, but the manner in which the petitioner's hips and body were moving were extremely suggestive. With the fact that many of the company lady employees as well as C.L. ladies were standing around, is what made their behaviour vulgar. The petitioners were also found dancing in such a manner on 26-9-2009 which was the day when the factory was being cleaned prior to the pooja. And that the partner of the company A.L. Shah had also seen this and had stopped the petitioners but their behaviour despite this warning is not understandable. The reply of the petitioner, dated 8-10-2009 is bald, absurd and there is no specific denial or counter for the show cause notice issued by the management on 5-10-2009. Hence, the termination order issued by the management, dated 14-10-2009 is just equitable and is warranted on the situation and circumstances failing which great threat, harm gross and discipline and hardships would have been created to the law abiding and harmonious employees especially the lady employees of the company and as such the petitioner is guilty of gross indiscipline, indecent behaviour and willful insubordination. The petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the show cause notice issued by the management but the explanation tendered by him was unjust, unreasonable and non-convincing. Hence, he prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P8 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 was marked.

5. *Now the point for determination is:*

"Whether the petitioner is entitled for the relief sought for?".

6. *On this point*:

The contention of the petitioner is that he was working as Helper in the respondent company from 19-9-2007. It is further contended by the petitioner that he joined in Employees Union affiliated with BMS and hence the respondent management with a false allegation that he whistled and danced in a vulgar manner on 27-9-2009 after completion of pooja and terminated him from service without conducting any domestic enquiry.

7. On the side of the petitioner, the petitioner examined himself as PW.1. PW.1 in his evidence has deposed as narrated in the claim statement. He marked Ex.P1 copy of the confirmation letter, Ex.P2 copy of the service standing order, Ex.P3 copy of the show cause notice issued to the petitioner, Ex.P4 copy of the explanation given by the petitioner to the respondent management, Ex.P5 copy of the termination order,

dated 14-10-2009, Ex.P6 copy of the reply submitted by the petitioner to the respondent, dated 5-11-2009, Ex.P7 copy of the petition filed before the Conciliation Officer, dated 19-10-2009 and Ex.P8 copy of the failure report, dated 4-10-2010.

8. *Per contra,* the contention of the respondent is that the petitioner along with several other employees were whistling and dancing in a vulgar manner on 27-9-2009 after completion of pooja and while breakfast was being served to all the employees, which was noticed by the Managing Partner and other senior staff of the company and hence he was issued with the show cause notice and since the explanation submitted by the petitioner was not satisfied, he was terminated from service. In order to prove the said version, the HR. Executive was examined as RW.1, who deposed as narrated in the counter statement.

9. There is no dispute that the petitioner was an employee in the respondent company from 19-9-2007. Further Ex.P1 would confirm the said fact. According to the petitioner, since he was participated in the union activities, he was terminated from service. But the said version of petitioner is denied by the respondent and has stated that the petitioner and some other employees were whistled and danced in a vulgar manner in pooja celebration and hence he was terminated from service after giving due opportunity to him. In order to prove the petitioner has whistled and danced in a vulgar manner in pooja celebration, no witness has been examined. According to RW.1, the said incident was witnessed by the Managing Partner and some of the senior staff. But neither the said Managing Partner nor any one of the senior staff was examined as a witness to prove the said fact. When the reason for terminating the petitioner has been denied by the petitioner, it is for the respondent to prove the same through oral or documentary evidence. But on the side of the respondent, no witness was examined except RW.1. The only document marked on the side of the respondent is the copy of the Board Resolution as Ex.R1, which is not in any way helpful to the case of the respondent.

10. The learned counsel for the petitioner would argue that the petitioner was terminated from service without conducting any domestic enquiry and hence the issue of termination order to him by the respondent company is a clear case of violation of rule of law, against the principles of natural justice and an act of unfair labour practice and therefore, the said order is illegal and is liable to be set aside.

11. It was also submitted by the learned counsel for the petitioner that there are various case laws, judgments, which indicate clearly that any employee removed from service without taking basic principles, the order of such removal/termination is to be treated as *null and void* and it is not maintainable as per the law and he further relied upon the following decision in order to support his claim:—

2011(1) C.L.T. 266, Supreme Court of India, Hon'ble Judges D.K. Hain and H.L. Dattu, JJ, Civil Appeal No.10135 of 2010 (Arising out of SLP © Nos.7187-7194 of 2008) between Amar Chakaravarthy and others *Vs.* Maruti Suzuki India Limited.

12. On the other hand, the learned counsel for the respondent submitted that the petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the show cause notice issued by the management but the explanation tendered by him was unjust, unreasonable and non-convincing and hence he was terminated from service.

13. On perusal of records, it is seen that the petitioner was issued with a show cause notice, dated 5-10-2009 by the Managing Director and called for an explanation as could be seen from Ex.P3 show cause notice. The records would further reveal that the petitioner has given his explanation on 8-10-2009 denying the contents found in Ex.P3 as could be seen from Ex.P4 and then the petitioner was terminated from service by the respondent company on 14-10-2009 which would evident from Ex.P5. Hence, the said records would clearly prove that no charges have been framed against the petitioner and based on which, the domestic enquiry has not been conducted by the respondent before terminating him from service. It is pertinent to refer the following decisions, which is relevant to this case:-

2002(4) L.L.N. 850:

"Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave- Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable."

1996(1) L.L.N. 526:

"In this case, the finding recorded by the High Court and the Labour Court is that stones were thrown and the officers were attacked which resulted in grievous injuries to the officers. But it is seen that the appellants alone were not members of the assembly of the workmen standing at BPL bus stop. The Labour Court had discretion under section 11A of the Industrial Disputes Act to consider the quantum of misconduct and the punishment. In view of the surging circumstances *viz.,* the workmen were agitating by their collective bargain for acceptance

of their demands and when the strike was on the settlement during conciliation proceedings though initially agreed to, was resiled later on. They appear to have attacked the officers when they were going to the factory. Under these circumstances, the Labour Court was well justified in taking a lenient view and in setting aside the order of dismissal and giving direction to reinstate the workmen with a cut of 75 per cent. of the back wages up to the date of award. In our considered view the discretion exercised by the Labour Court is proper and justified in the above facts and circumstances. The High Court had not adverted to these aspects of the matter. If merely had gone into the question whether the act complained of is a misconduct."

1991(1) LLN. Page 817:

"Misconduct - Situs of - Relevancy of - Workmen dismissed without enquiry for misconduct of assaulting engineer of factory - Incident taking place outside factory premises -Such an incident, held, cannot form basis of charge on ground of misconduct to bring it within scope of relevant standing order - Award of Labour Court reinstating workmen on ground that the involvement of workmen in the incident of assault has not been established cannot be interfered with by High Court -High Court cannot go into question of adequacy of evidence."

14. Even in a case of assaulting the employee, the domestic enquiry should be conducted as held by the Hon'ble High Court in the third citation mentioned above. In this case, the respondent's main allegation against the petitioner is that he whistled and danced in the pooja celebration in a vulgar manner that too was not proved by examining any of the witnesses before this court. Further it is not the case of the respondent that the petitioner was regular in misconduct with the employees. There is no past history of the workman to show that the petitioner involved in any misconduct or indiscipline by violating the principles of labour enactments. In this case, no enquiry conducted by the respondent to prove the alleged charges as stated by RW.1 in the presence of lady employees, which act of indiscipline violated the code of conduct within the campus of the industry. The petitioner cannot be denied to purports his defence before the Enquiry Officer. No Enquiry Officer was appointed to conduct the domestic enquiry to verify the charges levelled against the petitioner. In the above circumstances, the termination of the petitioner without conducting the domestic enquiry is against the labour legislation.

15. Further, as per Ex.P1, the petitioner was an employee in the respondent company for more than two years without any interruption and his services have also been confirmed. Hence, it was necessary to have given opportunity to the petitioner before coming to the conclusion that he was not found suitable or fit for being continued in service. Neither no such opportunity was given to the petitioner nor principles of natural justice have been complied with. Hence, I feel that the termination of the petitioner from the service is illegal and the same is liable to be set aside and I feel that 50% of wages can be awarded in the circumstances of the case towards back wages. The petitioner is also entitled for other attendant benefits. Accordingly, this point is answered.

16. In the result, the industrial dispute is allowed. The respondent is hereby directed to reinstate the petitioner with 50% of back wages and other attendant benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 17th day of August 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

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List of witnesses examined for petitioner :

PW.1 — 23-6-2011 K. Murugavel

List of witnesses examined for the respondent :

RW.1 — 25-7-2011 Sachin J. Khiya

List of exhibits marked for the petitioner :

Ex.P1 — Confirmation letter issued by the respondent to the petitioner, dated 19-9-2007.

Ex.P2 — Copy of service standing order.

Ex.P3 — Show cause notice issued by the Managing Director, dated 5-10-2009.

Ex.P4 — Petitioner's explanation letter, dated 8-10-2009

Ex.P5 — Termination order issued by the Managing Director, dated 14-10-2009.

Ex.P6 — Letter sent by the petitioner to the respondent, dated 5-11-2009.

Ex.P7 — Petition filed by the petitioner before Conciliation Officer, dated 19-10-2009.

Ex.P8 — Failure report, dated 4-10-2010

List of exhibits marked for the respondent :

Ex.R1 — Board resolution

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.